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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,	)	<b>CR 15-1723 TUC RCC (DTF)</b>
	)	
Plaintiff,	)	<b>MOTION FOR CHANGE</b>
	)	<b>OF VENUE</b>
v.	)	
	)	
LONNIE RAY SWARTZ,	)	
	)	
Defendant.	)	
	)	

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Excludable delay under 18 U.S.C. § 3161(h)(1)(F) may occur as a result of  
this motion or an order based thereon.

1           The defendant Lonnie Swartz, by and through counsel undersigned and  
2 pursuant to Fed. R. Crim. P. 21(a), hereby moves this Court for its order transferring  
3 this case to the United States District Court in Phoenix because the Defendant cannot  
4 be guaranteed a fair trial due to pervasive pretrial, trial and post-trial publicity in the  
5 division of the District Court that includes Nogales, Arizona where the shooting in  
6 this case took place. This motion is supported by the attached Memorandum of  
7 Points and Authorities.

8                       Dated this 22th day of August, 2018.

9  
10                      **LAW OFFICE OF JIM E. CALLE, P.C.**

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12  
13                      s/jimcalle

14                      Jim Calle

15                      Attorney for Lonnie Swartz  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. FACTS

#### A. The Shooting

Defendant Lonnie Swartz is a U.S. Border Patrol Agent (“BPA”). On October 11, 2012, BPA Swartz was working at the DeConcini Port of Entry checking vehicles headed into Mexico when he and fellow agents heard about a smuggling effort several hundred yards to the west. Swartz and the other agents responded and came upon a scene where two smugglers, who had just dumped their marijuana-filled backpacks in the United States, were trying to return back to Mexico by scaling the 20-foot-high border fence. Numerous BPAs and Nogales Police Department (“NPD”) officers responded, with some heading south to locate the marijuana bundles and others staying close to the fence where the smugglers were struggling to reach the top. At least two border cameras recorded the incident.

Several men soon converged in Mexico southwest of where the officers and agents had congregated. Their presence and their ensuing actions were established at trial as being part and parcel of the cartel’s smuggling operation. The men began throwing rocks and concrete at the law enforcement officers north of the border. The rock throwing was intended to give the smugglers more time to successfully return to Mexico. The rocks and concrete landed near several officers and agents, with one agent and one police dog being struck.

1 Agent Swartz, responding to the danger being faced by his fellow agents and  
2 officers, approached the border fence, identified a rock thrower and fired. Swartz's  
3 shots struck and killed the decedent, Elena Rodriguez, who fell on the sidewalk in  
4 Mexico. Swartz then moved west along the border fence and twice more fired  
5 volleys of shots at Elena Rodriguez.

### 6 **B. The Media Coverage**

7 The Tucson Division of the U.S. District Court for the District of Arizona  
8 draws its jurors from Southern Arizona and includes the counties of Cochise,  
9 Graham, Greenlee, Pima and Santa Cruz. These Southern Arizona communities are  
10 served by Tucson-based television stations KVOA-NBC 4, KGUN-ABC 9, KMSB-  
11 Fox 11, KOLD-CBS 13 and KHRR-Telemundo 40 (Spanish language). In addition,  
12 several print and virtual newspapers circulate news in Southern Arizona, including  
13 the Arizona Daily Star, Tucson Sentinel, Nogales International, Douglas Dispatch,  
14 Bisbee Daily Review, Eastern Arizona Courier, Gila Valley Central, Sierra Vista  
15 Herald and the Tucson Weekly. The circulation and broadcast areas for these stations  
16 and newspapers overlap and therefore ensure that coverage of an event reaches every  
17 location from where this Court draws potential jurors.

18 In addition, today's internet access means that potential jurors in Southern  
19 Arizona have a limitless ability to access and read news and opinions and see photos  
20 and graphics from online publications originating anywhere in the world. This means

1 potential jurors could have viewed coverage of this case in the New York Times,  
2 Huffington Post, Washington Post, Mexican Trucker, El Diario, Arizona Republic,  
3 CNN, Fox and Friends, Brietbart and NPR, to name a small sampling of sources that  
4 are readily accessible online.

5       There have been two types of media coverage relevant to this motion. The  
6 first is ongoing coverage of this case that started shortly after the shooting occurred,  
7 continued through the first trial, and continues to the present date. This coverage  
8 was periodic during the pretrial phase of the case and increased to daily media  
9 coverage immediately prior, during and after the trial. In particular, there were days  
10 of protest immediately after the jury's verdict in this case that closed several roads  
11 in the downtown Tucson area and were widely broadcast. There also have been  
12 numerous print and television stories on all manner of border issues directly related  
13 to the mission and activities of the U.S. Border Patrol. These stories include reports  
14 of drug and alien seizures, BP vehicle chases, smuggling vehicle rollovers, alien-  
15 involved shootings and murders, immigrant deaths, alien rapes, border security  
16 programs, the development of physical and electronic border fences, and numerous  
17 other reports. The intensity of the rhetoric surrounding these issues is unprecedented  
18 in the recent history of the United States and has resulted in deep divisions within  
19 our culture and extreme opinions on each and every one of the issues discussed. The  
20 stories of these divisions and opinions are reported on a daily basis across the entire

1 nation, and certainly in Southern Arizona and they often represent the top print and  
2 television stories of the day.

3       These two types of media coverage are inextricably intertwined, exceedingly  
4 pervasive, and have led to the extreme politicization of border issues for people  
5 living in Southern Arizona. Although some potential jurors from Southern Arizona  
6 may not have heard of Swartz's criminal case, they have all heard at least some of  
7 the immigration-related and border-related issues that are covered daily by the local  
8 and national press.

### 9                   **1. Pre-Trial and Trial Coverage**

10       Media coverage of this case was geographically pervasive and persistent  
11 before and during the first trial. There was television and print coverage of this case  
12 beginning Oct. 10, 2012 and continuing to the first day of trial, March 20, 2018. In  
13 just Southern Arizona, there were 602 television segments aired about the case prior  
14 to trial. (*See* Media Monitoring Report, attached as **Exhibit A.**) This coverage  
15 continued through the 5-week trial, during which 211 television segments aired. (*See*  
16 Media Monitoring Report, attached as **Exhibit B.**) These segments were broadcast  
17 on KVOA-NBC 4, KGUN-ABC 9, KMSB-Fox 11, KOLD-CBS 13 and KHRR-  
18 Telemundo 40 (Spanish language). In contrast, the Phoenix market had 187  
19 television segments published about the Swartz case prior to trial and 65 segments  
20 published during the trial. (*See* Media Monitoring Report, attached as **Exhibit C.**)

1 Television segments about the Swartz case in Phoenix appeared less than one-third  
2 as frequently than in Tucson and Southern Arizona.

3 In addition, there were hundreds of new articles published about this case  
4 before and during the trial in the Arizona Daily Star, Tucson Sentinel, Nogales  
5 International, Douglas Dispatch, Bisbee Daily Review, Sierra Vista Herald, Tucson  
6 Weekly and other Southern Arizona print and online publications. (*See* Sampling of  
7 published stories, attached as **Exhibit D.**) Finally, there were thousands of  
8 television, newspaper and online articles and video segments published in the United  
9 States, Mexico and around the world that were easily accessible to potential jurors  
10 in this case.

11 The single most pervasive image of this case is the photo, below, of Jose Elena  
12 Rodriguez provided by his family to numerous media outlets. Although the jurors in  
13 the first trial of this matter were presented with a more recent photo of Elena  
14 Rodriguez, the image below has been published thousands of times across the  
15 country and hundreds of time in Southern Arizona and it inaccurately depicted Elena  
16 Rodriguez as being younger than he actually was at the time of the incident.



1  
2 This photo has been extremely prejudicial to the Defendant because its wide  
3 publication in southern Arizona left anyone touched by the pervasive news coverage  
4 with the impression that Elena Rodriguez was much younger and, by appearance,  
5 less capable than a more recent photograph of him depicted. Importantly, although  
6 admitted into evidence at trial, the more recent photo of Elena Rodriguez, see below,  
7 was not released to the media so the inaccurate photo of Elena Rodriguez continues  
8 to be widely published.





The pretrial coverage in this case also frequently depicted Elena Rodriguez as a mere passerby in Mexico, who was unarmed and who had nothing to do with the ongoing smuggling effort at the international border fence. Trial testimony clearly established that these assertions were false. Elena Rodriguez was proved to be an active participant in the smuggling effort who was in the midst of assaulting federal and local law enforcement officials when he was shot. A jury of 12 men and women listened to the evidence and unanimously determined that BPA Swartz was not guilty of second-degree murder and they were unable to reach a unanimous verdict on the additional charges of voluntary manslaughter and involuntary manslaughter.

The jury's verdict caused an eruption of protest in Tucson and Nogales that underscores and supports the granting of this motion. A retrial of Swartz in Tucson, with jurors drawn from Southern Arizona locations, would be patently unfair.

## 2. Post-Trial Media Coverage



Within minutes of the jury's verdict, protestors began gathering in front of the

1 federal courthouse in downtown Tucson.



2

3 Their numbers swelled until they lined the sidewalks next to the federal court.



4

5 The protestors then moved into Tucson's downtown streets and began  
6 blocking traffic.

7





1  
2 The protests continued into the evening and eventually resulted in the closing  
3 of the Interstate 10 frontage road at Congress because protesters began blocking  
4 traffic.

5 The verdicts and ongoing protests also resulted in a flurry of television and  
6 print media reports being published in the ensuing days. In the Tucson area, there  
7 were 61 television segments aired after the trial ended on April 23, 2018 through  
8 May 2018. (See Media Monitoring Report, attached as **Exhibit E**.) There were also  
9 numerous print and internet stories published with the general tenor that Elena  
10 Rodriguez had been denied justice. Again, in contrast, there were only 29 television

1 segments aired in the Phoenix area, less than half the number aired in southern  
2 Arizona. (See Media Monitoring Report, attached as **Exhibit F.**)

3 The day after the jury's verdict, Edward Weisenburger, Bishop of the Catholic  
4 Diocese of Tucson, published a guest opinion in Tucsonsentinel.com providing as  
5 follows:

6 Yesterday's deeply troubling jury decision related to the Border  
7 Patrol agent stationed in the Nogales area, who fired multiple  
8 shots across our border with Mexico, killing a 16-year-old boy  
9 on October 10, 2012, raises serious issues of justice and  
10 accountability.

11  
12 While we are privileged to live in a nation whose greatness is  
13 rooted in its democracy and fair treatment of all, such decisions  
14 reveal that our democratic institutions are not without flaws and  
15 occasionally grave injustices. I find myself in a close bond of  
16 fraternity and solidarity with the family of Jose Antonio Elena  
17 Rodriguez and the many who have been unable to achieve the  
18 kind of authentic justice upon which our nation was founded.

19  
20 (*See Tucson Bishop: Not-guilty verdict 'deeply troubling' in border shooting death,*  
21 *TUCSON SENTINEL*, Guest Opinion, April 24, 2018, attached as **Exhibit G.**) As is  
22 obvious, the spiritual leader for the tens of thousands of Catholics in Southern  
23 Arizona was criticizing the decision of Swartz's 12-member jury and asserting that  
24 "authentic justice" had not been achieved. Of great concern to BPA Swartz is the  
25 fact that Bishop Weisenburger appears to be asserting that "authentic justice" cannot  
26 be achieved unless Swartz is convicted.

27 Four days after the verdict, the Nogales International published a story that

1 also raised the question of whether justice had been served in the Swartz trial. In  
2 fairness, the story quoted people reflecting several views but it is nevertheless  
3 problematic because, as with the Bishop, the story reflected a belief that justice could  
4 come only if BPA Swartz was convicted.

5 “This isn’t justice,” said Analizabeth Martinez, tearing up as she  
6 spoke about a jury’s decision Monday to acquit Border Patrol  
7 Agent Lonnie Swartz of second-degree murder in the 2012 fatal  
8 shooting of a 16-year-old Mexican boy through the border fence  
9 in Nogales. The victim, Jose Antonio Elena Rodriguez, “wasn’t  
10 an animal. He was a person, a human life,” said Martinez, 53, of  
11 Nogales. “And after all this time his family has been waiting for  
12 justice, what brutality, what grief they must feel.”

13  
14 Martinez, like others in the Ambos Nogales community, said she  
15 was shocked, angered and heartbroken over the news that Swartz  
16 might walk free after a federal jury in Tucson found him not  
17 guilty of the murder charge and were unable to reach a verdict on  
18 two lesser charges of manslaughter.

19  
20 (*See Justice served? Locals respond to BP Trial Verdict*, NOGALES INTERNATIONAL,  
21 April 27, 2018, attached as **Exhibit H**.)

22 A few days thereafter, the Nogales International reported that the U.S.  
23 Attorney’s Office had elected to retry BPA Swartz on the voluntary and involuntary  
24 manslaughter charges and it ran a picture of protesters outside the federal courthouse  
25 in Tucson on the day the decision was made.



1  
2 (*See Prosecutors will retry Swartz on manslaughter charges*, NOGALES  
3 INTERNATIONAL, May 11, 2018, attached as **Exhibit I**.) The clear sentiment in the  
4 picture is that, despite BPA Swartz’s acquittal on murder charges, some people  
5 refuse to accept this jury determination and continue to believe that Swartz is guilty  
6 of murder.

7 In Tucson, two days after the verdict, the Arizona Daily Star published an  
8 opinion piece by editorial writer Luis Carrasco. (*See Luis Carrasco: Juries must stop*  
9 *believing law enforcement officers are infallible*, ARIZONA DAILY STAR, April 25,  
10 2018, attached as **Exhibit J**.) In it, Carrasco laments the difficulty of successfully  
11 prosecuting law enforcement officers who employ “excessive force” and, in the  
12 process, he said: The Swartz case was “particularly egregious. At best, Swartz acted  
13 recklessly, firing repeatedly across the border toward homes in Nogales. At worst,  
14 he shot — over and over and over — a 16-year-old who represented no threat.” *Id.*

1 Carrasco also lambasted the defense's contention that if Elena Rodriguez had died  
2 early in the encounter with BPA Swartz that any subsequent shots suffered by Elena  
3 Rodriguez "didn't matter ..." *Id.* Carrasco called this "legal hairsplitting" despite the  
4 fact that this is what the law provides. *Id.* He believed it was "unconscionable that  
5 the [Swartz] jury could not reach a decision." In short, Carrasco's opinion was  
6 simultaneously criticizing the Swartz jurors for having firmly held beliefs that  
7 precluded a unanimous verdict and suggesting that any future Swartz jurors had no  
8 choice but to reach a unanimous verdict in what he believed to be a case of  
9 "excessive force." *Id.*

10 These examples conclusively demonstrate that the jury pool in Southern  
11 Arizona is getting increasingly poisoned by a belief held by many influence-makers  
12 and potential jurors that justice will only be achieved if BPA Swartz is convicted.  
13 They further demonstrate that any lesser verdict on retrial will subject those jurors  
14 to public criticism, scrutiny, or even denunciation within their religious  
15 communities.

### 16 **C. The Impact of Immigration and Border Stories on Swartz's** 17 **Trial**

18  
19 As previously noted, Southern Arizona - like the rest of the United States -  
20 has been bombarded by thousands of media stories involving immigration, border  
21 security, a border wall, alien family separation, Immigration and Customs



1 Enforcement actions, border apprehensions, alien crimes and so on. These issues  
2 have increasingly divided and polarized the citizenry of our country. According to a  
3 recent 2018 NPR/Ipsos poll, the polarization on these issues is frequently split along  
4 political party lines:

- 5 • One in four Americans believe immigration is the most  
6 worrying issue facing America, including 20% of  
7 Democrats, 34% of Republicans and 25% of Independents.
- 8 • 28% support separating families who cross the border  
9 illegally as a deterrent, including 52% of Republicans and  
10 11% of Democrats.
- 11 • 40% of Americans support building a wall along the entire  
12 U.S.-Mexico border including 74% of Republicans and 16%  
13 of Democrats.
- 14 • 38% believe that refugees and asylum seekers are taking an  
15 unfair advantage of the U.S immigration system, including  
16 65% of Republicans, 19% of Democrats and 40% of  
17 Independents.
- 18 • 65% believe the government should fine U.S. employers  
19 found to hire undocumented immigrants, including 81% of  
20 Republicans and 56% of Democrats, and 67% of  
21 Independents
- 22 • 60% believe in giving legal status to undocumented or  
23 illegal immigrants brought to the U.S. as children, including  
24 76% of Democrats, 45% of Republicans, and 60% of  
25 Independents.

26 (See *NPR/Ipsos Poll: American Views on Immigration Policy*, NPR, July 16,  
27 2018, attached as **Exhibit K.**)

28 The defense is convinced that proximity to the border amplifies the impact of  
29 these stories on the residents of Southern Arizona who hear them. In contrast, the  
30 citizens of Maricopa County, being farther from the border, are less likely to feel the



1 impact of border issues.

2 One study supports the contention that border proximity increases media  
3 coverage of immigration and border issues. (*See e.g.* “Geographic Media Agenda  
4 Setting: Spatial Proximity to the US-Mexico Border and Local News Coverage of  
5 Immigration Issues,” Presented to the Annual Meeting of the Midwest Political  
6 Science Association, Chicago, Ill., April 20-23, 2006, at 21-22, attached as **Exhibit**  
7 **L.**) The study asserts that the frequency of such media publications impacts the  
8 opinions and behavior of the public.

9 The literature on media impact illustrates the effect media  
10 coverage can have on political attitudes. According to this  
11 literature, what the media decides to cover has important  
12 implications for public opinion and political behavior through  
13 the effects of agenda setting, framing, and priming. Agenda  
14 setting describes the process by which the news media shows the  
15 public what is important by giving more salience to certain  
16 events and issues than others. Because of increased media  
17 attention, certain issues and events are more salient in the minds  
18 of citizens. As a result, they believe the issues receiving the  
19 majority of the coverage to be most important. This implies that  
20 heightened coverage of immigration in areas proximate to the  
21 border will disproportionately increase the salience of  
22 immigration and other border issues in the minds of the public.  
23 Priming occurs when the way information is presented  
24 influences audiences’ beliefs (Iyengar et al 1982). For example,  
25 Valentino, Hutchings and White (2002) demonstrate that subtle  
26 racial cues embedded in political advertisements can prime  
27 negative racial attitudes by making negative images and  
28 stereotypes of minorities more accessible in the audience’s  
29 memory. This suggests that in areas proximate to the US-Mexico  
30 border, the frequency of negative news coverage featuring  
31 Latinos may exacerbate perceptions of threat by priming latent

1 negative stereotypes about Latino immigrants or Latinos more  
2 generally.

3  
4 *Id.* at 4-5 (internal citations omitted). In sum, the content and presentation of media  
5 messages can have a powerful effect on political attitudes. *Id.* at 5.

6 The available research supports the premise that the intense media coverage  
7 along Arizona's borders intensifies and polarizes the political views of people  
8 exposed to such coverage. People who believe the border is too porous and that  
9 illegal immigrants are not welcome will carry commensurate political views that will  
10 impact their ability to be fair. Likewise, people who believe the United States is too  
11 harsh on immigrants or who think the U.S. Border Patrol treats aliens unfairly will  
12 also have disparate, yet equally politicized views that impact their ability to be fair  
13 jurors.

## 14 **II. THE LAW**

15 The Sixth Amendment of the United States Constitution guarantees criminal  
16 defendants the right to trial by an impartial jury of the state and district where the  
17 crime was committed. U.S. Const. amend. VI. The prosecution generally occurs in  
18 a district in which the offense was committed. Rule 18, Fed. R. Crim. Proc. Upon  
19 the defendant's motion, however, the court must transfer the proceedings to another  
20 district "if the court is satisfied that so great a prejudice against the defendant exists

1 in the transferring district that the defendant cannot obtain a fair and impartial trial”  
2 here. Rule 21(a), Fed. R. Crim. Proc.

3 “In essence, the right to jury trial guarantees to the criminally accused a fair  
4 trial by a panel of impartial, ‘indifferent’ jurors. The failure to accord an accused a  
5 fair hearing violates even the minimal standards of due process.” *Irvin v. Dodd*, 366  
6 U.S. 717, 722 (1961). In the present case, after a highly publicized first trial, it will  
7 be impossible for people living in southern Arizona, given the pervasive media  
8 coverage of the case, to separate their personal viewpoints from the facts of this case.

9 Because a criminal defendant has the right to an impartial jury, a court must  
10 grant a motion to change venue “if prejudicial pretrial publicity makes it impossible  
11 to seat an impartial jury.” *Ainsworth v. Calderon*, 138 F.3d 787, 795 (9<sup>th</sup> Cir. 1998),  
12 *as amended*, 152 F.3d 1223. Prejudice can be either presumed or actual. *Jeffries v.*  
13 *Blodgett*, 5 F.3d 1180, 1189 (9<sup>th</sup> Cir. 1993). “Prejudice is presumed when the record  
14 demonstrates that the community where the trial was held was saturated with  
15 prejudicial and inflammatory media publicity about the crime.” *Harris v. Pulley*, 885  
16 F.2d 1354, 1361 (9<sup>th</sup> Cir. 1988). Actual prejudice is demonstrated where a sufficient  
17 number of the jury panel “had such fixed opinions that they could not judge  
18 impartially the guilt of the defendant” so that it is clear that a trial before that panel  
19 would be inherently prejudicial. *Id.* at 1364, *quoting Patton v. Yount*, 467 U.S. 1025,  
20 1035 (1984).

1 In deciding whether there was actual prejudice against a defendant in the  
2 district, we “must determine if the jurors demonstrated actual partiality or hostility  
3 that could not be laid aside.” *Id.* at 1363. “[A] key factor in gauging the reliability of  
4 juror assurances of impartiality is the percentage of veniremen who ‘will admit to a  
5 disqualifying prejudice.’ ” *Id.* at 1364, *quoting Murphy v. Florida*, 421 U.S. 794,  
6 803 (1975). A trial judge has substantial discretion in gauging the effects of allegedly  
7 prejudicial publicity and in taking measures to insure a fair trial. *U.S. v. McDonald*,  
8 576 F.2d 1350 (9<sup>th</sup> Cir. 1978).

9 Ordinarily, the proper time for determining whether widespread prejudice  
10 prohibits selecting an impartial jury and, hence, warrants a change of venue, is  
11 during voir dire; however, if the probability of prejudice is great because of deeply  
12 rooted passions or recent massive publicity, the efficacy of voir dire in screening the  
13 prospective jurors is diminished; in such a situation the court may become satisfied  
14 even prior to voir dire that the probability of a fair trial in the district is minimal.  
15 *U.S. v. Holder*, 399 F.Supp. 220 (D.C.S.D. 1975); *U.S. v. Marcello*, 280 F. Supp.  
16 510 (E.D. La 1968).

### 17 **III. ANALYSIS**

18 The pervasive and engrained media coverage of this case and the protests,  
19 opinions and news stories critical of the first jury’s decisions is more than sufficient  
20 evidence for this Court to find that prejudice must be presumed. The media in Tucson

1 and Southern Arizona has saturated the geographic location of potential jurors with  
2 numerous and persistent news stories in English and Spanish. The increased  
3 frequency of such media coverage focuses citizens on the issues covered and  
4 politicizes their opinions on immigration-related issues including the treatment of  
5 smugglers at the border. These opinions are shaped by immigration and border issues  
6 separate and apart from issues of guilt or innocence in an individual case. These  
7 polarized opinions nevertheless taint jurors sufficiently in their reasoning and  
8 decision-making in criminal trials to result in an unfair trial for a criminal defendant  
9 accused of crimes such as those in this case.

10 More specifically, the Swartz case involves the highly publicized and  
11 controversial shooting of a 16-year-old boy who was throwing rocks from Mexico  
12 at U.S. law enforcement officers. This case resulted in substantial pretrial, trial and  
13 post-trial publicity. Moreover, following a jury determination that Swartz was not  
14 guilty of second-degree murder, community members from across southern Arizona  
15 protested in downtown Tucson, shutting down several streets including the frontage  
16 road to Interstate 10. These protests resulted in additional media coverage  
17 throughout Southern Arizona, including criticism by a prominent religious leader,  
18 that clearly left many people believing that justice had not been served despite an  
19 independent determination by a 12-person jury.

1           This latter point is crucial to the consideration of where Swartz's retrial should  
2 take place. Although he was able to seat a fair jury in the first instance, there now  
3 exists a substantial risk that potential jurors may purposefully hide their strong  
4 beliefs of this case solely so they can participate in the proceeding. In short, the risks  
5 are greater than at any previous time in this case for jurors to be selected who have  
6 purposefully hidden their strong passions – and perhaps their belief of injustice in  
7 the first trial – from this Court. Thus, there is a substantial danger that Swartz will  
8 not be judged by 12 dispassionate, open-minded jurors. In light of this risk, the  
9 appropriate remedy is for this matter to be moved to a location that has not been  
10 subjected to the intense media coverage or to the passionate days of protest that  
11 ensued following the first trial. As the defendant has shown, jurors in the Phoenix  
12 area have been subjected to only one-third to one-half of the media coverage  
13 bombarding potential jurors in southern Arizona. As a result, Phoenix would be a  
14 good alternative to both mitigate the prejudicial impact of the publicity and increase  
15 the likelihood that BPA Swartz will get a fair trial. *See Jones v. Gasch*, 404 F.2d  
16 1231 (D.C. Cir. 1967) (Rule 21 was intended to rectify deficiency in law by affording  
17 accused opportunity to avoid provincial emotion so intense as to doom objectivity  
18 of trial).

#### 19   **IV. CONCLUSION**

20           Based on the foregoing, the Defendant respectfully requests this Court to find

1 that the publicity pervading this matter up to and including this day warrants a  
2 change of venue.

3 Dated this 22<sup>th</sup> day of July, 2018.

4  
5 **LAW OFFICE OF JIM E. CALLE, P.C.**  
6  
7

8  
9 s/Jim Calle

10 Jim Calle

11 Attorney for Lonnie Swartz  
12

13 Copy electronically filed this date with:

14  
15 United States District Court  
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17 Wallace Kleindienst

18 Mary Sue Feldmeier

19 U.S. Attorney's Office  
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